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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

CASE NO.: 4:20-cv-03664-YGR

**SECOND CORRECTED DECL. OF
MARK MAO IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
SUMMARY JUDGMENT**

Judge: Hon. Yvonne Gonzalez Rogers
Date: May 12, 2023
Time: 1:00 p.m.
Location: Courtroom 1 – 4th Floor

DECLARATION OF MARK C. MAO

I, Mark C. Mao, declare as follows.

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this Declaration with Plaintiffs' Opposition to Google's MSJ.

3. Attached hereto as **Exhibit 1** is a true and correct copy of portions of the deposition transcript of deponent Jesse Adkins. This deposition was taken on April 14, 2021.

4. Attached hereto as **Exhibit 2** is a true and correct copy of an excerpt of the transcript from the deposition of Sabine Borsay. This deposition was taken on June 30, 2022.

5. Attached hereto as **Exhibit 3** is a true and correct copy of an excerpt of the transcript from the deposition of Chasom Brown. This deposition was taken on January 13, 2022.

6. Attached hereto as **Exhibit 4** is a true and correct copy of an excerpt of the transcript from the deposition of William Byatt. This deposition was taken on December 20, 2021.

7. Attached hereto as **Exhibit 5** is a true and correct copy of an excerpt of the transcript from the deposition of Christopher Castillo. This deposition was taken on February 8, 2022.

8. Attached hereto as **Exhibit 6** is a true and correct copy of an excerpt of the transcript from the deposition of Jeremy Davis. This deposition was taken on January 7, 2022.

9. Attached hereto as **Exhibit 7** is a true and correct copy of an excerpt of the transcript from the deposition of Monique Trujillo. This deposition was taken on February 11, 2022.

10. Attached hereto as **Exhibit 8** is a true and correct copy of the Rebuttal to Report of Georgios Zervas and Supplemental Report of Jonathan E. Hochman (including appendices), dated June 7, 2022. Portions of the supporting materials to this report will be provided electronically.

1 11. Attached hereto as **Exhibit 9** is a true and correct copy of a document Google
2 produced in discovery labeled GOOG-CABR-00501220.

3 12. Attached hereto as **Exhibit 10** is a true and correct copy of a document Google
4 produced in discovery labeled GOOG-BRWN-00613409.

5 13. Attached hereto as **Exhibit 11** is a true and correct copy of a document Google
6 produced in discovery labeled GOOG-CABR-03611484.

7 14. Attached hereto as **Exhibit 12** is a true and correct copy of an excerpt of the
8 transcript from the 2022 deposition of Glen Berntson. This deposition was taken on March 18,
9 2022.

10 15. Attached hereto as **Exhibit 13** is a true and correct copy of a document Google
11 produced in discovery labeled GOOG-BRWN-00032906.

12 16. Attached hereto as **Exhibit 14** is a true and correct copy of Google's Response to
13 Plaintiffs' Request For Admission Number 31, dated January 20, 2022.

14 17. Attached hereto as **Exhibit 15** is a true and correct copy of Google's Response to
15 Plaintiffs' Request For Admission Numbers 52-55, dated January 20, 2022.

16 18. Attached hereto as **Exhibit 16** is a true and correct copy of an excerpt of the
17 transcript from the deposition of Jonathan Hochman. This deposition was taken on July 20 and
18 21, 2022.

19 19. Attached hereto as **Exhibit 17** is a true and correct copy of the Expert Rebuttal
20 Report of Bruce Schneier Rebuttal of Expert Georgios Zervas, dated June 7, 2022.

21 20. Attached hereto as **Exhibit 18** is a true and correct copy of an excerpt of the
22 transcript from the 2023 deposition of Glen Berntson. This deposition was taken on February 14,
23 2023.

24 21. Attached hereto as **Exhibit 19** is a true and correct copy of an excerpt of the
25 transcript from the deposition of Georgios Zervas. This deposition was taken on August 22, 2022.

26 22. Attached hereto as **Exhibit 20** is a true and correct copy of an excerpt of the
27 transcript from the deposition of Rory McClelland. This deposition was taken on February 18,
28

1 2022.

2 23. Attached hereto as **Exhibit 21** is a true and correct copy of an excerpt of the
3 transcript from the deposition of Brian Rakowski. This deposition was taken on August 19, 2021.

4 24. Attached hereto as **Exhibit 22** is a true and correct copy of a document Google
5 produced in discovery labeled GOOG-BRWN-00490767.

6 25. Attached hereto as **Exhibit 23** is a true and correct copy of a document Google
7 produced in discovery labeled GOOG-BRWN-00153850.C.

8 26. Attached hereto as **Exhibit 24** is a true and correct copy of an excerpt of the
9 transcript from the deposition of On Amir. This deposition was taken on August 16, 2022.

10 27. Attached hereto as **Exhibit 25** is a true and correct copy of the Expert Report of
11 Michael J. Lasinski, dated April 22, 2022.

12 28. Attached hereto as **Exhibit 26** is a true and correct copy of a December 20, 2022
13 letter from Google's Counsel to Plaintiffs' counsel disclosing, for the first time, existence of the
14 fourth-disclosed private-browsing detection bit.

15 29. Attached hereto as **Exhibit 27** is a true and correct copy of a portion of the
16 transcript of the April, 29, 2021 hearing.

17 30. Attached hereto as **Exhibit 28** is a true and correct copy of a statement by Barb
18 Palser made July 21, 2020, which is available at [https://blog.google/outreach-initiatives/google-](https://blog.google/outreach-initiatives/google-news-initiative/protecting-private-browsing-chrome/)
19 [news-initiative/protecting-private-browsing-chrome/](https://blog.google/outreach-initiatives/google-news-initiative/protecting-private-browsing-chrome/) (last accessed April 12, 2023).

20 31. Attached hereto as **Exhibit 29** is a true and correct copy of a document titled
21 "How Google Uses Information from Sites or Apps that Use our Services, which is available at
22 <https://policies.google.com/technologies/partner-sites?hl=en=US> (last accessed April 12, 2023).

23 32. Attached hereto as **Exhibit 30** is a true and correct copy of the Google Analytics
24 Terms of Service, which is available at
25 <https://marketingplatform.google.com/about/analytics/terms/us/> (last accessed April 13, 2023).

26 33. Attached hereto as **Exhibit 31** is a true and correct copy of a document Google
27 produced in discovery labeled GOOG-CABR-05287675.

1 34. Attached hereto as **Exhibit 32** is a true and correct copy of a document Google
2 produced in discovery labeled GOOG-BRWN-00042388.

3 35. Attached hereto as **Exhibit 33** is a true and correct copy of a document Google
4 produced in discovery labeled GOOG-CABR-00094550.

5 36. Attached hereto as **Exhibit 34** is a true and correct copy of a document Google
6 produced in discovery labeled GOOG-BRWN-00153850.C.

7 37. Attached hereto as **Exhibit 35** is a true and correct copy of a document Google
8 produced in discovery labeled GOOG-CABR-05756666.

9 38. Attached hereto as **Exhibit 36** is a true and correct copy of a document Google
10 produced in discovery labeled GOOG-CABR-04718352.

11 39. Attached hereto as **Exhibit 37** is a true and correct copy of a document Google
12 produced in discovery labeled GOOG-BRWN-00047341.

13 40. Attached hereto as **Exhibit 38** is a true and correct copy of a document Google
14 produced in discovery labeled GOOG-CABR-04431207.

15 41. Attached hereto as **Exhibit 39** is a true and correct copy of a document Google
16 produced in discovery labeled GOOG-CABR-04668451.

17 42. Attached hereto as **Exhibit 40** is a true and correct copy of a document Google
18 produced in discovery labeled GOOG-CABR-04738550.

19 43. Attached hereto as **Exhibit 41** is a true and correct copy of a document Google
20 produced in discovery labeled GOOG-BRWN-00477510.

21 44. Attached hereto as **Exhibit 42** is a true and correct copy of a document Google
22 produced in discovery labeled GOOG-CABR-00084985.

23 45. Attached hereto as **Exhibit 43** is a true and correct copy of an excerpt of the
24 transcript from the deposition of Christopher Palmer. This deposition was taken on January 5,
25 2022.

26 46. Attached hereto as **Exhibit 44** is a true and correct copy of a document Google
27 produced in discovery labeled GOOG-CABR-04261880.
28

1 47. Attached hereto as **Exhibit 45** is a true and correct copy of a document Google
2 produced in discovery labeled GOOG-BRWN-00390418.

3 48. Attached hereto as **Exhibit 46** is a true and correct copy of a document Google
4 produced in discovery labeled GOOG-CABR-05145513.

5 49. Attached hereto as **Exhibit 47** is a true and correct copy of a document Google
6 produced in discovery labeled GOOG-CABR-03923580.

7 50. Attached hereto as **Exhibit 48** is a true and correct copy of a document Google
8 produced in discovery labeled GOOG-BRWN-00410884.

9 51. Attached hereto as **Exhibit 49** is a true and correct copy of a document Google
10 produced in discovery labeled GOOG-BRWN-00475063.

11 52. Attached hereto as **Exhibit 50** is a true and correct copy of a document Google
12 produced in discovery labeled GOOG-BRWN-00812710.

13 53. Attached hereto as **Exhibit 51** is a true and correct copy of a document Google
14 produced in discovery labeled GOOG-BRWN-00686207.

15 54. Attached hereto as **Exhibit 52** is a true and correct copy of a document Google
16 produced in discovery labeled GOOG-BRWN-00164056.

17 55. Attached hereto as **Exhibit 53** is a true and correct copy of a document Google
18 produced in discovery labeled GOOG-BRWN-00047341.

19 56. Attached hereto as **Exhibit 54** is a true and correct copy of a document Google
20 produced in discovery labeled GOOG-BRWN-00437647.

21 57. Attached hereto as **Exhibit 55** is a true and correct copy of a document Google
22 produced in discovery labeled GOOG-BRWN-0056810.

23 58. Attached hereto as **Exhibit 56** is a true and correct copy of an excerpt of the
24 transcript from hearing held on October 11, 2022.

25 59. Attached hereto as **Exhibit 57** is a true and correct copy of a document Google
26 produced in discovery labeled GOOG-CABR-04971904.

27 60. Attached hereto as **Exhibit 58** is a true and correct copy of a document Google
28

1 produced in discovery labeled GOOG-BRWN-00806426.

2 61. Attached hereto as **Exhibit 59** is a true and correct copy of a document Google
3 produced in discovery labeled GOOG-BRWN-00441285.

4 62. Attached hereto as **Exhibit 60** is a true and correct copy of a document Google
5 produced in discovery labeled GOOG-CABR-03827263.

6 63. Attached hereto as **Exhibit 61** is a true and correct copy of a document Google
7 produced in discovery labeled GOOG-CABR-04971904.

8 64. Attached hereto as **Exhibit 62** is a true and correct copy of a document Google
9 produced in discovery labeled GOOG-BRWN-00457255.

10 65. Attached hereto as **Exhibit 63** is a true and correct copy of a document Google
11 produced in discovery labeled GOOG-BRWN-00475063.

12 66. Attached hereto as **Exhibit 64** is a true and correct copy of a document Google
13 produced in discovery labeled GOOG-CABR-00799719.

14 67. Attached hereto as **Exhibit 65** is a true and correct copy of a document Google
15 produced in discovery labeled GOOG-CABR-05905167.

16 68. Attached hereto as **Exhibit 66** is a true and correct copy of a document Google
17 produced in discovery labeled GOOG-CABR-04746153.

18 69. Attached hereto as **Exhibit 67** is a true and correct copy of a document Google
19 produced in discovery labeled GOOG-BRWN-00184517.

20 70. Attached hereto as **Exhibit 68** is a true and correct copy of Google's Response to
21 Plaintiffs' Request for Admission Numbers 26 and 27.

22 71. Attached hereto as **Exhibit 69** is a true and correct copy of a document Google
23 produced in discovery labeled GOOG-CABR-05836882.

24 72. Attached hereto as **Exhibit 70** is a true and correct copy of a document Google
25 produced in discovery labeled GOOG-CABR-05150754.

26 73. Attached hereto as **Exhibit 71** is a true and correct copy of a document Google
27 produced in discovery labeled GOOG-BRWN-00166653.

1 74. Attached hereto as **Exhibit 72** is a true and correct copy of a document Google
2 produced in discovery labeled GOOG-BRWN-00164056.

3 75. Attached hereto as **Exhibit 73** is a true and correct copy of a document Google
4 produced in discovery labeled GOOG-BRWN-00406065.

5 76. Attached hereto as **Exhibit 74** is a true and correct copy of a document Google
6 produced in discovery labeled GOOG-BRWN-00048967.C.

7 77. Attached hereto as **Exhibit 75** is a true and correct copy of a document Google
8 produced in discovery labeled GOOG-CABR-03764749.

9 78. Attached hereto as **Exhibit 76** is a true and correct copy of a document Google
10 produced in discovery labeled GOOG-BRWN-00027632.

11 79. Attached hereto as **Exhibit 77** is a true and correct copy of a document Google
12 produced in discovery labeled GOOG-BRWN-00147864.

13 80. Attached hereto as **Exhibit 78** is a true and correct copy of a document Google
14 produced in discovery labeled GOOG-BRWN-00183662.

15 81. Attached hereto as **Exhibit 79** is a true and correct copy of a document Google
16 produced in discovery labeled GOOG-BRWN-00047399.

17 82. Attached hereto as **Exhibit 80** is a true and correct copy of a document Google
18 produced in discovery labeled GOOG-BRWN-00140297.

19 83. Attached hereto as **Exhibit 81** is a true and correct copy of a document Google
20 produced in discovery labeled GOOG-CABR-00501220.

21 84. Attached hereto as **Exhibit 82** is a true and correct copy of a document Google
22 produced in discovery labeled GOOG-BRWN-00176477.

23 85. Attached hereto as **Exhibit 83** is a true and correct copy of a document Google
24 produced in discovery labeled GOOG-CABR-00552177.

25 86. Attached hereto as **Exhibit 84** is a true and correct copy of a document Google
26 produced in discovery labeled GOOG-BRWN-00067645.

27 87. Attached hereto as **Exhibit 85** is a true and correct copy of a document Google
28

1 produced in discovery labeled GOOG-BRWN-00182492.

2 88. Attached hereto as **Exhibit 86** is a true and correct copy of a document Google
3 produced in discovery labeled GOOG-BRWN-00047390.

4 89. Attached hereto as **Exhibit 87** is a true and correct copy of an excerpt of the
5 transcript from the deposition of Abdel Karim Mardini. This deposition was taken on November
6 24, 2021.

7 90. Attached hereto as **Exhibit 88** is a true and correct copy of a document Google
8 produced in discovery labeled GOOG-CABR-04739841.

9 91. Attached hereto as **Exhibit 89** is a true and correct copy of a document Google
10 produced in discovery labeled GOOG-BRWN-0063504.

11 92. Attached hereto as **Exhibit 90** is a true and correct copy of a document Google
12 produced in discovery labeled GOOG-BRWN-00063505.

13 93. Attached hereto as **Exhibit 91** is a true and correct copy of a document Google
14 produced in discovery labeled GOOG-BRWN-00169228.

15 94. Attached hereto as **Exhibit 92** is a true and correct copy of a document Google
16 produced in discovery labeled GOOG-BRWN-00047390.

17 95. Attached hereto as **Exhibit 93** is a true and correct copy of a document Google
18 produced in discovery labeled GOOG-BRWN-00388293.

19 96. Attached hereto as **Exhibit 94** is a true and correct copy of a document Google
20 produced in discovery labeled GOOG-BRWN-00176477.

21 97. Attached hereto as **Exhibit 95** is a true and correct copy of a document Google
22 produced in discovery labeled GOOG-BRWN-00202175.

23 98. Attached hereto as **Exhibit 96** is a true and correct copy of a document Google
24 produced in discovery labeled GOOG-BRWN-00433503.

25 99. Attached hereto as **Exhibit 97** is a true and correct copy of a document Google
26 produced in discovery labeled GOOG-BRWN-00391231.

27 100. Attached hereto as **Exhibit 98** is a true and correct copy of a document Google
28

1 produced in discovery labeled GOOG-BRWN-00806482.

2 101. Attached hereto as **Exhibit 99** is a true and correct copy of a document Google
3 produced in discovery labeled GOOG-BRWN-00701189.

4 102. Attached hereto as **Exhibit 100** is a true and correct copy of a document Google
5 produced in discovery labeled GOOG-BRWN-00782689.

6 103. Attached hereto as **Exhibit 101** is a true and correct copy of a document Google
7 produced in discovery labeled GOOG-CABR-04780837.

8 104. Attached hereto as **Exhibit 102** is a true and correct copy of a document Google
9 produced in discovery labeled GOOG-BRWN-00555073.

10 105. Attached hereto as **Exhibit 103** is a true and correct copy of an excerpt of the
11 transcript from the deposition of Ramin Halavati. This deposition was taken on January 18, 2022.

12 106. Attached hereto as **Exhibit 104** is a true and correct copy of examples of URLs
13 contained in the Hochman Opening Report Ex. F, containing the following content from each
14 named Plaintiff: folders, subfolders, path, user-generated search terms, GCLID, and information
15 revealing the portion of the webpage viewed.

16 107. **Exhibit 105** is a copy of Exhibits B and F to the Hochman Opening Expert
17 Report, which will be electronically provided to the Court.

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct. Executed this 1st day of May, 2023, at San Francisco, California

20 /s/ Mark Mao
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